

SERVICE ON NON-RESIDENTS

INSTRUCTIONS

(A) Pursuant to Title 10 of the Delaware Code, the Secretary of State can be served with process filed against out-of-state Defendants regardless of whether the Defendant is an individual, a corporation, or any other type of entity. The fee is \$2.00 for each Defendant served. Checks should be made payable to the Delaware Secretary of State and drawn on a U.S. Bank. Questions should be directed to the Secretary of State office at (302) 739-3077 (ask for service of process assistance).

If the Plaintiff files under the \$2.00 fee, the court sends the paperwork to the Secretary of State's Office. When the paperwork is returned to us, we will notify the Plaintiff. You should have the Defendant's correct address.

(1) It is the **Plaintiff's** responsibility to mail copies of all papers to the Defendant by **registered mail (not certified mail), return receipt requested**, within 7 calendar days of receipt. Papers to be sent are as follows:

- (a) Copy of Summons (Civil Form No. 2, 3 or 4),
- (b) Complaint (Civil Form No. 1),
- (c) A blank copy of Defendant's Answer to the Complaint (Civil Form No. 7)(not applicable in Landlord/Tenant cases),
- (d) Any other documents filed with the court,
- (e) The following notice: *Enclosed is a copy of the process and complaint served upon the Secretary of State. Service of the original of such process has been made upon the Secretary of State of Delaware pursuant to 10*

Del.C. §§ 3104 or 3112. Such service is as effective as if it had been made upon a non-resident personally within this State.

The receipt for the registered mailing described above will be returned to the Plaintiff by the Post Office marked to show delivery (or lack of delivery) of the envelope. If the receipt is returned "received" or "refused", the Plaintiff must take the action described in section (2) below. If the receipt is returned "unclaimed", the Plaintiff must take the action described in section (3) below. If the receipt or envelope is returned marked "Defendant moved, no forwarding address" or other language indicating an incorrect address was used, usually Plaintiff must obtain Defendant's correct address and file an alias or plurias writ with the court.

(2) If the receipt is returned "received" or "refused", **within 10 calendar days of the return**, the Plaintiff must file with the court the return receipt of the registered letter (received from the Post Office) and a notarized affidavit containing the following:

- (a) date the notice was mailed,
- (b) date the notice was returned to Plaintiff,
- (c) statement that the required notice was contained in the envelope

when it was mailed,

- (d) statement that the receipt filed with the affidavit is the receipt obtained at the time of mailing the notice to the Defendant.

(3) If the receipt or envelope is returned "unclaimed", **within 7 calendar days of the return**, the Plaintiff must file with the court the return receipt received from the Post Office and the envelope in which the notice was sent together with a notarized affidavit which must contain the following:

- (a) date the notice was mailed,
- (b) date the notice was returned to Plaintiff,
- (c) statement that the required notice was contained in the envelope

when it was mailed,

- (d) statement that the receipt filed with the affidavit is the receipt obtained at the time of mailing the notice to the Defendant.

After filing this affidavit with the court, the Plaintiff must, **within 7 calendar days**, send another notice to the Defendant by registered mail, return receipt requested, which includes all of the papers (or copies of the papers) which were sent with the first mailing.

If the receipt from the second mailing is returned "received" or "refused", the Plaintiff must file, **within 10 days of the return**, the return receipt and a notarized affidavit stating the Defendant's nonresidence and that the complaint and required notice were sent to the Defendant.

If the receipt from the second mailing is returned "unclaimed", the Plaintiff must file **within 7 days of the return**, the return receipt for registered mail, the envelope in which the second notice was sent and a notarized affidavit containing the following:

- (a) date the second notice was mailed,
- (b) date the second notice was returned to Plaintiff,
- (c) statement that the required notice was contained in the envelope when it was mailed,
- (d) statement that the receipt filed with the affidavit is the receipt obtained at the time of mailing the second notice to the Defendant.

(4) In addition to service by registered mail, the Plaintiff may send a copy of the contents of the original notice envelope to the Defendant by regular mail to make it more likely that the Defendant will receive actual notice of the complaint.

(B) For a \$50.00 service fee, pursuant to Title 8 for corporate Defendants or Title 6 for limited partnerships of the Delaware Code, process may be served on the Secretary of State when:

- (1) The Corporation or Limited Partnership is inactive according to the records of the Secretary of State.
- (2) The Defendants Registered Agent or the Defendant itself cannot be served, or
- (3) The Defendant is an Unqualified Foreign Corporation or an Unregistered Foreign Limited Partnership.

The Plaintiff is required to supply two copies of the process to the Secretary of State office (one to be sent to the Defendant by the Secretary of State office by certified mail as notice of the case). In the case of an Unqualified Foreign Corporation or an Unregistered Foreign Limited Partnership, the Plaintiff must also supply the address of the Defendant. Questions should be directed to the Secretary of State office at (302) 739-3077 (ask for service of process assistance).